IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7209 OF 2004

Baldevsingh Harkishan Singh Kohli Petitioner

versus

The State of Maharashtra & ors. Respondents

ALONG WITH
WRIT PETITION NO.7210 OF 2004

Kamalchand M. Nagori Petitioner

versus

The State of Maharashtra & ors. Respondents

Shri O.R.Tiwari for petitioners.
Shri R.V.Govilkar for respondent no.4.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th February 2006

PC :

1. The petitioners by these petitions under Article 227 of the Constitution of India challenge the orders passed by the Divisional Commissioner and Administrator, Konkan Division, Mumbai upholding the order of the Deputy Collector (Encroachment Removal) and Competent Authority, Mumbai Suburban District, Borivali delivered on 14th January 2004.

2. It is the case of the petitioners that their structure was in existence prior to 1st January 1995. Therefore, they are not liable to be evicted as encroachers on Government land. In any event, their contention is that the amended provisions of Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 would not apply to them. These contentions have not been considered by both, the Deputy Collector and the Divisional Commissioner.

3. In the aforesaid circumstances, I inquired from Shri Govilkar appearing for respondent no.4 co-operative society and he contended that he would agree to the matter being remitted back to the Divisional Commissioner, Konkan Division for hearing on both counts.

4. Shri Murty and Shri Tiwari appearing for the petitioners are agreeable to the matter being remanded to the Divisional Commissioner. Accordingly both petitions are disposed of by following order.

5. ORDER :- A) The appeals preferred by the petitioners to challenge the order of the Deputy

Collector dated 14th January 2004 shall be re-heard by the Divisional Commissioner, Konkan Division, Mumbai on merits and in accordance with law as also uninfluenced by the order passed by him and which is impugned in this petition;

B) As a result of the aforesaid, the orders passed on 9th June 2004 by the Divisional Commissioner in both appeals are set aside;

C) The matters are remitted back to the Divisional Commissioner who shall hear the same on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order;

D) All contentions on merits of both sides are expressly kept open.

(S.C.DHARMADHIKARI, J.)